

ELECTION OF INVENTION

Claims 1-20 are pending in this application. Restriction has been required as between the following allegedly distinct groups of inventions:

Group I (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **desosamine** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group II (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **cladinose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group III (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **mycaminose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group IV (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **oleandrose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group V (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **forosamine** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group VI (claims 1-20 (all-in-part)): drawn to a recombinant E. coli host cell containing an expression system for producing **daunosamine** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group VII (claims 1-20 (all-in-part)): drawn to a recombinant *E. coli* host cell containing an expression system for producing **mycarose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group VIII (claims 1-20 (all-in-part)): drawn to a recombinant *E. coli* host cell containing an expression system for producing **ascarylose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33;

Group IX (claims 1-20 (all-in-part)): drawn to a recombinant *E. coli* host cell containing an expression system for producing **rhamnose** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33; and

Group X (claims 1-20 (all-in-part)): drawn to a recombinant *E. coli* host cell containing an expression system for producing **mycosamine** as the diphosphate 6-deoxy-sugar, classified in class 435, subclass 252.33.

Applicants hereby elect Group I (claims 1-20 (all-in-part)), which contains an expression system for producing desosamine, with traverse with respect to the restriction between Groups II through X.

Claim 1 is directed to a recombinant *E. coli* host cell containing an expression system for producing at least one nucleotide diphosphate 6-deoxy-sugar. Dependent claim 4 lists ten sugars that may be produced by such expression system. Thus, claim 1 is broader than claim 4. However, the Restriction Requirement only defines the groups based on each of the ten sugars and does not account for a group which contains a broader description of sugars which may be produced by an expression system defined in claim 1. Thus, it is respectfully submitted that the applicants will be prejudiced if they will not be able to claim the invention as they choose contrary to case law. Please see *In re Weber* 198 USPQ 328 (CCPA 1978). MPEP § 803.02 also addresses PTO practice regarding Markush-type claims, which states that members of a Markush group that are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all of the members, even though they are

directed to independent and distinct inventions. Perhaps the Examiner intended to require an election of species as described in MPEP § 803.02. For these reasons, it is respectfully requested that the claims be examined in a single application.

Applicants expressly reserve their right under 35 U.S.C. § 121 to file a divisional application directed to the nonelected subject matter during the pendency of this application, or an application claiming priority from this application.


CONCLUSION

Applicants request reconsideration of the restriction requirement and examination of the elected subject matter on the merits.

In the unlikely event that the transmittal form is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 286002022900. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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